

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 487 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE and
MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

KAMLESHKUMAR CHIMANLAL PATEL

Versus

JIGNIYASHABEN D/O JITENDRABHAI

Appearance:

MR. I.D.SHAH, Power of Attorney Holder for Petitioner
SERVED for Respondent No. 1
MR BS PATEL for Respondent No. 2
MR. S.T.MEHTA, LD.PUBLIC PROSECUTOR for Respondent No. 4

CORAM : MR.JUSTICE S.D.DAVE and
MR.JUSTICE H.R.SHELAT

Date of decision: 19/06/96

ORAL JUDGEMENT

PER: DAVE,J:-

The present proceedings are in the nature of

Habeas Corpus petition. The petitioner Kamleshkumar Patel by this petition urges that the Respondent No.1 Jigniyashaben happens to be his legally married wife and that, the marriage had taken place at Petlad. Later on the marriage has been registered on 10th November 1995. It appears to be a case of the petitioner further that, somewhere in the month of December 1995, Jigniyashaben was taken to Nadiad by a relation of her, namely Shri. Narendrabhai Patel who happens to be a practicing lawyer at Nadiad, on plea of a short stay at Nadiad after marriage. According to the petitioner, on 6-1-1996 he had approached learned J M F C at Vadodara by taking out the proceedings under Section 97 of the Code of Criminal Procedure 1973. His case further is that, Jigniyashaben - his legally married wife is in the unlawful custody of the Respondents No. 2 & 3 who happen to be her parents. His apprehension is that she is under wrongful or illegal confinement and that, the parents do not allow her to move out or to see him. On the basis of this petition a notice was ordered to be issued to the otherside. The respondents have appeared. This Court had under earlier orders directed that, Respondent No.1 Jigniyasha should be kept present before the Court. In pursuance of this order it is clear that Jigniyasha was present before this Court on May 08, 1996. Her views and preference were ascertained by this Court. During this process Jigniyasha had made two things abundantly clear. She had denied the alleged marriage between her and the petitioner. She has also stated before the Court that, she would not like to go in the company of the petitioner. Any how the matter came to be adjourned on that day. This is the way in which the matter comes before us today.

Shri. I.D.Shah who says that he is the attorney of the petitioner is present before us in company of the petitioner. The affidavit-in-rejoinder is being filed. The same should be taken on record.

Shri. Shah urges before us that, on the last occasion when the views and the preference of Jigniyasha came to be ascertained by this Court the same was required to be done in-camera and as the same has not been done, Jigniyasha was under the influence and pressure of her parents, and therefore the above said expression of the views can not be said to be the honest or sincere expression of views. The further contention coming from Shri. Shah is that, therefore once again we should call Jigniyasha before us and that her desire should be ascertained in-camera.

The very same contentions are being urged in the rejoinder which is being presented before us today. We do not find ourselves in agreement with the contentions coming from Shri. Shah. It is abundantly clear that Jigniyasha was before this Court and she had made two categorical statements. She had denied her marriage with the petitioner and secondly, she had made it abundantly clear that she would not like to go in the company of the petitioner. There was nothing to indicate that Jigniyasha was in illegal confinement or wrongful restraint by her parents, namely Respondents Nos. 2 & 3. Thus it appears very clearly that her views and preference were ascertained and they have been recorded in the earlier orders of this Court dated May 08, 1996. We do not see any justifiable reason to call Jigniyasha once again for the very same exercise. There is a contention coming from Shri. Shah that on the last occasion they could not make the necessary request to the concerned Court for hearing Jigniyasha in-camera. Even if this could be said to be a correct statement, we would not like to disregard the orders recorded by the earlier Bench. Because of this position we would say that the plea coming from Shri. Shah in this respect can not be accepted. As said by us earlier, we do not see any justifiable reason for repeating the very same exercise. Thus it appears that when the plea coming from the petitioner through his attorney can not be accepted, the present petition requires to be disposed of.

There are two other aspects annexed to the present proceedings. The petitioner had initiated the proceedings under Section 97 of the Code of Criminal Procedure 1973 before the learned J M F C, Vadodara. Jigniyasha had appeared before the Court and had stated there also that, she has not married to the petitioner and that she would not like to go in his company. This statement also would go against the petitioner. It is also being represented before us that, Jigniyasha had initiated certain proceedings for obtaining the orders regarding the nullity of the marriage. This is also a fact which should go against the petitioner.

Without expressing any opinion regarding the validity or otherwise of the marriage, which question should be decided by the competent Court, we say that when Jigniyasha has made it clear before this Court on the earlier occasion that, she is not under any confinement or restraint and that she would not like to go in the company of the petitioner, the present petition must fail because it is in the nature of habeas corpus.

The petition therefore fails and the same is hereby
dismissed accordingly. Notice stands discharged.
